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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND DIVISION**
11

12 KORVEL M. SUTTON,

13 Plaintiff,

14 v.

15 APPLE COMPUTERS ITUNES, et al.,

16 Defendants.
17

Case No. C 11-03911 LB

**DECLARATION OF JEREMY SMITH IN
SUPPORT OF APPLE INC.'S
OPPOSITION TO PLAINTIFF'S MOTION
FOR ENTRY OF DEFAULT JUDGMENT
AND MOTION TO VACATE ENTRY OF
DEFAULT**

18
19 I, Jeremy Smith, declare and state as follows:

20 1. I am a Contracts Manager for the iTunes Store® Legal Team at Apple Inc.

21 ("Apple"). At all relevant times, my primary responsibility at Apple has been to support the
22 business operations of the iTunes Store service.

23 2. I submit this declaration in support of Apple's Opposition to Plaintiff's Motion
24 for Entry of Default Judgment and Motion to Vacate Entry of Default. All of the facts set forth
25 herein are known to me personally and, if called and sworn as a witness, I would testify to all
26 information herein under oath.

27 3. At all relevant times, Apple has operated a music download service known as the
28 iTunes Store. For the musical content available for download from the iTunes Store, owners of

DECLARATION OF JEREMY SMITH
CASE NO. C 11-03911 LB

1 the copyright in that content contractually authorize Apple to promote, sell, and distribute that
2 content.

3 4. I have reviewed the complaint in this action, and I understand that plaintiff alleges
4 copyright infringement by Apple through the operation of the iTunes Store service with respect to
5 the following songs from the album "Pretty Boy Gangsters" (the "Album") by the group of the
6 same name—whether those songs were made available individually or as part of that album:

7 Pretty Boy Gangster

8 Hard as F*ck

9 Activist

10 Monies on my Mind

11 Mack [or Back] on Top of the Stack

12 PBG [or P.B.G.'s] Get Funky

13 K the Buster

14 On Top [or On the Tip] of a Mack

15 Indo Smoke

16 It Ain't Sh*t

17 I will refer to these songs as the "Tracks."

18 5. I also understand that plaintiff alleges copyright infringement by Apple through
19 the operation of the iTunes Store with respect to one or more of those same songs when they were
20 included in one or more of the following compilations that featured multiple artists:

21 Elektro Hip Hop Party vol. 3

22 The Biggest Hip Hop Anthems

23 West Coast Posse, vol. 2

24 West Coast Posse, vol. 1

25 U.S. Hip Hop Party

26 The Best of Street Dance

27 I Love Hip Hop

28 2 Live Crew & Posse

1 Dr. Dre presents More Mega Big Gangsta Raps

2 Toddy Tee and Dr. Dre

3 I will refer to these compilations as the "Compilations."

4 6. I have reviewed Apple's business records regarding the operation of the iTunes
5 Store service, and I have determined that the song "K the Buster" by "Pretty Boy Gangsters" also
6 appears on four other compilations that featured multiple artists:

7 Ministry of Hip Hop Presents: Rappers Guide

8 The Biggest Hip Hop Anthems

9 N.W.A. & Posse, Vol. 2

10 Niggas With Attitude, Vol. 3

11 I will refer to these compilations as the "Additional Compilations."

12 7. I have further reviewed Apple's business records regarding the operation of the
13 iTunes Store service, and I have determined that at all times through the present date when any of
14 the Album, the Tracks, the Compilations, or the Additional Compilations were available from the
15 iTunes Store, an entity named Rams Horn BV had contractually granted to Apple the rights to
16 promote, sell, and distribute all of that content.

17 8. I have also reviewed Apple's business records to determine the geographic regions
18 in which the iTunes Store service offered to consumers the Album, the Tracks, the Compilations,
19 or the Additional Compilations. I have determined that the iTunes Store service never offered to
20 consumers in the United States any of the following compilations:

21 Elektro Hip Hop Party vol. 3

22 The Biggest Hip Hop Anthems

23 U.S. Hip Hop Party

24 The Best of Street Dance

25 I Love Hip Hop

26 2 Live Crew & Posse

27 Dr. Dre presents More Mega Big Gangsta Raps

28 Toddy Tee and Dr. Dre

1 Ministry of Hip Hop Presents: Rappers Guide

2 The Biggest Hip Hop Anthems

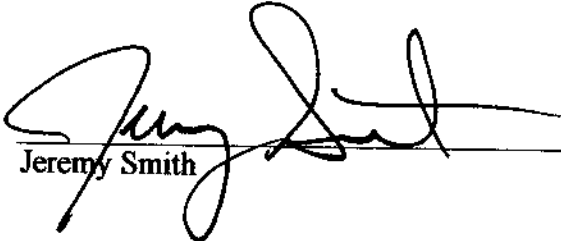
3 N.W.A. & Posse, Vol. 2

4 Niggas With Attitude, Vol. 3.

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6 I declare under penalty of perjury under the laws of the United States of America that the
7 foregoing is true and correct. Executed on the 20th day of November, 2011 at

8 Morgan Hill, CA.

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Jeremy Smith